



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ██████████
██
██

DECISION

MPA/169643

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on November 25, 2015, by telephone.

The issue for determination is whether the Division correctly authorized 24.5 hours of Personal Care Worker (PCW) time weekly for the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
██ ██████████
██

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By written submission of ██████████, RN BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is certified for MA.
2. On September 18, 2015, a prior authorization request (#... ██████████) was submitted on the petitioner's behalf for 24.50 scheduled hours weekly of PCW services, *plus* 10 hours weekly of "as needed"

PCW time, beginning October 12, 2015. On October 15, 2015, the Division issued written notice that it was approving the request by approving PCW time of **24.5** hours weekly.

3. The Division has not denied any PCW hours beyond those listed on the physician's Plan of Care. The Division cannot authorize more hours than what a doctor has requested, as the doctor is making a representation that 24.5 hours weekly is what is medically necessary for this patient.
4. The petitioner, age 33, resides in an apartment for the disabled in the community. The petitioner has diagnoses that include paraplegia and neurogenic bladder/bowel.
5. The petitioner requires PCW physical assistance with bathing, dressing, grooming, incontinence care, transfers, taking medication and ambulation. He feeds himself with occasional assistance due to contractures in one hand. The petitioner also needs help with housekeeping tasks, such as laundry.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that it has approved all of the care requested by the petitioner's doctor, so there is no quarrel between the Division/MA program and the petitioner. There may be a difference of opinion between the petitioner and his doctor. The petitioner bears the burden of establishing, by a preponderance of the credible evidence, that additional care is needed.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;

12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(2)(b). For tasks #1 through #4, #6, #8, #9, and #12, the Division's medical professionals have calculated typical task performance times, and placed them in a policy reference document, *Personal Care Activity Time Allocation Table*. Those task performance times from the *Table* were consistent with and used to authorize the 24.5 weekly hours here.

The petitioner testified that his PC worker has historically been able to complete all tasks in 28.5 hours weekly, and that the new level of hours (24.5) is not adequate. The worker is not always able to finish the laundry or prepare meals.

The overriding problem for the petitioner in this case is that his doctor approved 24.5 hours weekly (3.5 hours daily x 7 = 24.5), and the MA program authorized that amount. The MA program does not authorize more service than what the doctor requested. The petitioner may wish to either (1) speak to his doctor, or (2) contact an IRIS worker to see if more care time for housekeeping is available through the IRIS program.

CONCLUSIONS OF LAW

1. The Division correctly authorized all of the PCW time, 24.5 hours weekly, requested by the petitioner's doctor on the prior authorization form submitted by the service provider.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

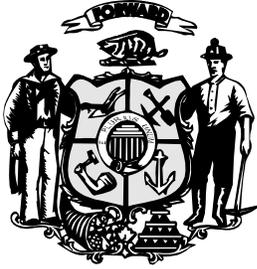
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of November, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 25, 2015.

Division of Health Care Access and Accountability